

INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 54, “Governor’s Award for Quality Care,” Chapter 57, “Residential Care Facilities,” Chapter 58, “Nursing Facilities,” Chapter 62, “Residential Care Facilities for Persons with Mental Illness (RCF/PMI),” Chapter 63, “Residential Care Facilities for the Intellectually Disabled,” Chapter 64, “Intermediate Care Facilities for the Intellectually Disabled,” and Chapter 65, “Intermediate Care Facilities for Persons with Mental Illness (ICF/PMI),” Iowa Administrative Code.

The proposed amendments, which are technical, delete references to the resident advocate committee of a health care facility. Resident advocate committees with oversight by the state office of the long-term care ombudsman are no longer in existence, having been repealed by 2013 Iowa Acts, Senate File 184, and replaced with the certified volunteer long-term care ombudsman program established in Iowa Code section 231.45 as amended by 2013 Iowa Acts, Senate File 184. In addition, the technical amendments remove references to resident advocate committees and the state office of the long-term care ombudsman from Chapters 62, 63, 64 and 65 of the Department’s rules. These chapters regulate facilities primarily serving persons with mental illness or intellectual disabilities, which, pursuant to Iowa Code section 231.42(2)(a), the state office of the long-term care ombudsman does not serve.

The Department does not believe that the proposed amendments impose any financial hardship on any regulated entity, body, or individual.

The State Board of Health reviewed the proposed amendments at its September 11, 2013, meeting.

Any interested person may make written suggestions or comments on the proposed amendments on or before October 22, 2013. Such written materials should be addressed to the Director, Department of Inspections and Appeals, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083; faxed to (515)242-6863; or e-mailed to david.werning@dia.iowa.gov.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 135C.14 and 2013 Iowa Acts, Senate File 184.

The following amendments are proposed.

ITEM 1. Amend rule 481—54.4(135C) as follows:

481—54.4(135C) Applicant eligibility. Eligible nominations shall be made by a resident, family member of a resident, ~~member of a resident advocacy committee,~~ or another health care facility. A health care facility cannot nominate itself for the award; however, this prohibition shall not apply to facilities with common ownership.

ITEM 2. Rescind rule 481—57.24(135C) and adopt the following new rule in lieu thereof:

481—57.24(135C) Certified volunteer long-term care ombudsman program. A certified volunteer long-term care ombudsman appointed in accordance with Iowa Code section 231.45 as amended by 2013 Iowa Acts, Senate File 184, shall operate within the scope of the rules for volunteer ombudsmen promulgated by the office of long-term care ombudsman and the Iowa department on aging.

ITEM 3. Amend subrule 57.37(3) as follows:

57.37(3) The facility shall post in a prominent area the name, telephone number, and address of the ombudsman, survey agency, local law enforcement agency, and ~~resident advocate committee members~~ certified volunteer long-term care ombudsman and the text of Iowa Code section 135C.46 to provide to residents a further course of redress. (II)

ITEM 4. Rescind rule 481—58.27(135C) and adopt the following new rule in lieu thereof:

481—58.27(135C) Certified volunteer long-term care ombudsman program. A certified volunteer long-term care ombudsman appointed in accordance with Iowa Code section 231.45 as amended by 2013 Iowa Acts, Senate File 184, shall operate within the scope of the rules for volunteer ombudsmen promulgated by the office of long-term care ombudsman and Iowa department on aging.

ITEM 5. Amend subrule 58.41(3) as follows:

58.41(3) The facility shall post in a prominent area the name, telephone number, and address of the ombudsman, survey agency, local law enforcement agency, and ~~resident advocate committee members~~ certified volunteer long-term care ombudsman and the text of Iowa Code section 135C.46 to provide to residents a further course of redress. (II)

ITEM 6. Amend subrule 62.9(4) as follows:

62.9(4) Personnel record.

a. A personnel record shall be kept for each employee. (III)

~~a.~~ b. The record shall include the employee's:

1. to 13. No change.

~~b.~~ b. ~~The personnel records shall be made available to the long-term care resident's advocate/ombudsman of the department on aging in response to a complaint being investigated.~~

ITEM 7. Amend subparagraph **62.14(4)“b”(3)** as follows:

(3) The type of hearing shall be determined by a representative of the department. Notice of the date, time, and place of the hearing shall be sent by certified mail or delivered in person to the licensee, resident, and legal guardian, ~~and Iowa department on aging long-term care resident's advocate/ombudsman of record,~~ not later than five full business days after receipt of the request. This notice shall also inform the licensee, resident, ~~or~~ and legal guardian that they have a right to appear at the hearing in person or be represented by their attorneys or other individual. The hearing shall be dismissed if neither party is present or represented at the hearing. If only one party appears or is represented, the hearing shall proceed with one party present. ~~The Iowa department on aging's long-term care resident's advocate/ombudsman shall have the right to appear at the hearing.~~ (II)

ITEM 8. Amend subparagraph **62.14(4)“b”(5)**, introductory paragraph, as follows:

(5) Based upon all testimony and material submitted to the representative of the department, the representative shall issue, in accordance with Iowa Code chapter 17A, written findings of fact and conclusions of law and issue a decision and order in respect to the adverse action. This decision shall be mailed by regular mail to the licensee, resident, and responsible party, ~~and department on aging long-term care ombudsman~~ within 10 working days after the hearing has been concluded. The representative shall have the power to issue fines and citations against the facility in appropriate circumstances.

ITEM 9. Amend subparagraph **62.14(4)“b”(6)** as follows:

(6) A copy of the notice required by 62.14(4) shall be personally delivered to the resident and a copy placed in the resident's record. A copy shall also be transmitted to the department, the resident's legal guardian, physician, and the person or agency responsible for the resident's placement, maintenance, and care in the facility, ~~and the department on aging's long-term care resident's advocate/ombudsman.~~ (II)

ITEM 10. Rescind and reserve rule ~~481—62.22(135C)~~.

ITEM 11. Amend subrule 62.23(9) as follows:

62.23(9) Posting of names. The facility shall post in a prominent area the name, telephone number, and address of the ~~long-term care resident's advocate/ombudsman~~, survey agency, ~~the local law enforcement agency, care review committee members, Iowa Protection and Advocacy Services, Inc.,~~ and the protection and advocacy agency designated pursuant to Iowa Code section 135C.2(4) and the text of Iowa Code section 135C.46; to provide to residents another course of redress. (II)

ITEM 12. Rescind and reserve rule ~~481—63.22(135C)~~.

ITEM 13. Amend paragraph **63.34(1)“f”** as follows:

f. The type of hearing shall be determined by a representative of the department. Notice of the date, time, and place of the hearing shall be sent by certified mail or delivered in person to the licensee, resident, and responsible party, ~~and Iowa department on aging long-term care ombudsman of record~~ not later than five full business days after receipt of the request. This notice shall also inform the licensee, resident ~~or~~ and responsible party, that they have a right to appear at the hearing in person or be represented by their attorneys or other individual. The hearing shall be dismissed if neither party is present or represented at the hearing. If only one party appears or is represented, the hearing shall proceed with one party present. ~~The Iowa department on aging long-term care ombudsman shall have the right to appear at the hearing.~~

ITEM 14. Amend paragraph **63.34(1)“h,”** introductory paragraph, as follows:

h. Based upon all testimony and materials submitted to the representative of the department, the representative shall issue, in accordance with Iowa Code chapter 17A, written findings of fact and conclusions of law and issue a decision and order in respect to the adverse action. This decision shall be mailed by certified mail to the licensee, resident, and responsible party, ~~and department on aging long-term care ombudsman~~ within 10 working days after the hearing has been concluded. The representative shall have the power to issue fines and citations against the facility in appropriate circumstances.

ITEM 15. Amend paragraph **63.34(1)“i”** as follows:

i. A copy of the notice required by paragraph “c” shall be personally delivered to the resident and a copy placed in the resident’s record. A copy shall also be transmitted to the department, the resident’s responsible party, physician, and the person or agency responsible for the resident’s placement, maintenance, and care in the facility, ~~and the department on aging long-term care ombudsman.~~

ITEM 16. Amend subrule 63.35(3) as follows:

63.35(3) The facility shall post in a prominent area the name, telephone number, and address of the ombudsman, survey agency, and local law enforcement agency, ~~care review committee members,~~ and the text of Iowa Code section 135C.46, ~~etc.,~~ to provide to residents a further course of redress. (II)

ITEM 17. Rescind and reserve rule ~~481—64.35(135C)~~.

ITEM 18. Amend paragraph **64.36(1)“f”** as follows:

f. The type of hearing shall be determined by a representative of the department. Notice of the date, time, and place of the hearing shall be sent by certified mail or delivered in person to the licensee, resident, and responsible party, ~~and Iowa department of elder affairs long-term care ombudsman of record~~ not later than five full business days after receipt of the request. This notice shall also inform the licensee, resident ~~or~~ and responsible party that they have a right to appear at the hearing in person or be represented by their attorneys or other individual. The hearing shall be dismissed if neither party is present or represented at the hearing. If only one party appears or is represented, the hearing shall proceed with one party present. ~~The Iowa department of elder affairs long-term care ombudsman shall have the right to appear at the hearing.~~

ITEM 19. Amend paragraph **64.36(1)“h,”** introductory paragraph, as follows:

h. Based upon all testimony and material submitted to the representative of the department, the representative shall issue, in accordance with Iowa Code chapter 17A, written findings of fact

and conclusions of law and issue a decision and order in respect to the adverse action. This decision shall be mailed by certified mail to the licensee, resident, and responsible party, ~~and department of elder affairs long term care ombudsman~~ within 10 working days after the hearing has been concluded. The representative shall have the power to issue fines and citations against the facility in appropriate circumstances.

ITEM 20. Amend paragraph **64.36(1)“i”** as follows:

i. A copy of the notice required by 64.36(1)“c” shall be personally delivered to the resident and a copy placed in the resident’s record. A copy shall also be transmitted to the department, the resident’s responsible party, physician, and the person or agency responsible for the resident’s placement, maintenance, and care in the facility, ~~and the department of elder affairs long term care ombudsman~~.

ITEM 21. Amend subrule 65.2(2) as follows:

65.2(2) A résumé of care with a narrative which includes the following information shall be submitted:

a. to *c.* No change.

d. A description of the human service system available in the area, including, but not limited to, social, public health, visiting nurse, vocational training, employment services, sheltered living arrangements, and services of private agencies; and

e. A description of working relationships with the human service agencies when applicable which shall include at least how the facility will coordinate with:

(1) The department of human services to facilitate continuity of care and coordination of services to residents; and

(2) Other agencies to identify unnecessary duplication of services and plan for development and coordination of needed services;

~~*f.* A list of members of the care review committee; and~~

~~*g.* A description of a program of training for the care review committee concerning their role in the ongoing care and treatment of residents.~~

ITEM 22. Rescind subparagraph **65.8(1)“c”(14)**.

ITEM 23. Renumber subparagraph **65.8(1)“c”(15)** as **65.8(1)“c”(14)**.

ITEM 24. Amend subrule 65.9(4) as follows:

65.9(4) Personnel record.

a. A personnel record shall be kept for each employee. (III)

~~*b.* The record shall include the employee’s:~~

(1) to (13) No change.

~~*b.* The personnel records shall be made available to the long term care resident’s advocate/ombudsman of the department on aging in response to a complaint being investigated. (III)~~

ITEM 25. Amend paragraph **65.16(6)“a”** as follows:

a. The type of hearing determined by a representative of the department. Notice of the date, time, and place of the hearing shall be sent by United States mail or delivered in person to the licensee, resident, and legal guardian, ~~and Iowa department on aging’s long term care resident’s advocate/ombudsman of record~~ not later than five full business days after receipt of the request. This notice shall also inform the licensee, resident, and legal guardian that they have a right to appear at the hearing in person or be represented by their attorneys or other individuals. The hearing shall be dismissed if neither party is present or represented at the hearing. If only one party appears or is represented, the hearing shall proceed with one party present. ~~The Iowa department on aging’s long term care resident’s advocate/ombudsman shall have the right to appear at the hearing. (II)~~

ITEM 26. Amend paragraph **65.16(6)“c”** as follows:

c. Based upon all testimony and materials submitted to the representative of the department, the representative shall issue, in accordance with Iowa Code chapter 17A, written findings of fact, conclusions of law, and issue a decision and order. This decision shall be mailed by regular mail

to the licensee, resident, and legal guardian, ~~and department on aging's long-term care resident's advocate/ombudsman~~ within ~~ten~~ 10 working days after the hearing has been concluded. (II)

ITEM 27. Amend paragraph **65.16(6)“d,”** introductory paragraph, as follows:

d. Based upon all testimony and material submitted to the representative of the department, the representative shall issue, in accordance with Iowa Code chapter 17A, written findings of fact and conclusions of law and issue a decision and order in respect to the adverse action. This decision shall be mailed by certified mail to the licensee, resident, and responsible party, ~~and department on aging's long-term care resident's advocate/ombudsman~~ within 10 working days after the hearing has been concluded. The representative shall have the power to issue fines and citations against the facility in appropriate circumstances.

ITEM 28. Amend paragraph **65.16(6)“e”** as follows:

e. A copy of the notice required by 65.16(4) shall be personally delivered to the resident by the licensed facility and a copy placed in the resident's record. A copy shall also be transmitted to the department, the resident's legal guardian, physician, and the person or agency responsible for the resident's placement, maintenance, and care in the facility, ~~and the department on aging's long-term care resident's advocate/ombudsman~~. (II)

ITEM 29. Rescind and reserve rule **481—65.24(135C)**.

ITEM 30. Rescind subrule 65.25(10) and adopt the following **new** subrule in lieu thereof:

65.25(10) Posting of names. The facility shall post in a prominent area the name, telephone number, and address of the survey agency, local law enforcement agency, administrator, members of the board of directors, corporate headquarters, and the protection and advocacy agency designated pursuant to Iowa Code section 135C.2(4) and the text of Iowa Code section 135C.46 to provide to residents another course of redress. (II)